



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 242

[Docket DARS-2022-0025]

RIN 0750-AL20

Defense Federal Acquisition Regulation Supplement: Quick-Closeout Procedures Threshold (DFARS Case 2021-D001)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a recommendation from the Government Accountability Office regarding quick-closeout procedures.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: David E. Johnson, telephone 202-913-5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 87 FR 65505 on October 28, 2022, to amend the DFARS to update the quick-closeout procedures and expand contracts eligible for quick-closeout. There were no public comments submitted in

response to the proposed rule. There are no changes made to the final rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products, including Commercially Available Off-the-Shelf (COTS) Items, and Commercial Services

This rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

IV. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of

Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule revises the DFARS to implement changes to the indirect cost rate quick-closeout procedures. Government Accountability Office Report 17-738, Federal Contracting: Additional Management Attention and Action Needed to Close Contracts and Reduce Audit Backlog, published September 2017 recommended that DoD develop a means for Department-wide oversight into both components' progress in meeting goals on closing contracts and the status of contracts eligible for closeout. The Advisory Panel on Streamlining and Codifying Acquisition Regulations (Section 809 Panel) was established pursuant to section 809 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92) to deliver recommendations that could transform the defense acquisition system to meet the threats and demands of the 21st century. Additionally, the Section 809 Panel recommended authorizing the

settlement of final overhead rates when it is in the best interest of the Government and closing complete contracts regardless of dollar value or the percentage of unsettled direct and indirect costs allocable to the contracts (recommendation 58).

This rule states that the amount of unsettled direct costs and indirect costs to be allocated to the contract, task order, or delivery order will be considered relatively insignificant when the total unsettled direct costs or indirect costs to be allocated do not exceed \$2 million. Additionally, DCMA administrative contracting officers may negotiate the settlement of direct and indirect costs for a specific contract, task order, or delivery order to be closed in advance of the determination of final direct costs and indirect rates set forth in FAR 42.705 regardless of the dollar value or percentage of unsettled direct or indirect costs allocable to the contract.

There were no public comments submitted in response to the proposed rule.

This rule will likely affect small entities that have been or will be awarded contracts, task orders, and delivery orders valued over \$2 million. Data was obtained from the Procurement Business Intelligence Service (PBIS) for contracts that were awarded in fiscal years 2019 through 2021 and eligible for quick-closeout procedures, were valued at more than \$2 million, and contained one of the following FAR clauses:

- 52.216-7, Allowable Cost and Payment (including Alternates I, II, IV);
- 52.216-17, Incentive Price Revision—Successive Targets (including Alternate I);
- 52.242-3, Penalties for Unallowable Costs; and
- 52.242-4, Certification of Final Indirect Costs.

Data from PBIS revealed DoD awarded contracts to an average of 832 small businesses per year in fiscal years 2019 through 2021. Therefore, this rule may apply to approximately 832 unique small entities.

The rule does not impose any new reporting, recordkeeping, or compliance requirements.

DoD did not identify any significant alternatives that would minimize or reduce the significant economic impact on small entities because this rule is not expected to have a significant impact on small entities.

VI. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 242

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR 242 is amended as follows:

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

1. The authority citation for 48 CFR 242 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Add section 242.708 to read as follows:

242.708 Quick-closeout procedure.

(a) Defense Contract Management Agency administrative contracting officers are authorized to negotiate the settlement of direct and indirect costs for a specific contract, task order, or delivery order to be closed in advance of the determination of final direct costs and indirect rates set forth in FAR 42.705, regardless of the dollar value or percentage of unsettled direct or indirect costs allocable to the contract, task order, or delivery order.

(2) In lieu of the thresholds at FAR 42.708(a)(2)(i) and (ii), the amount of unsettled direct costs and indirect costs to be allocated to the contract, task order, or delivery order will be considered relatively insignificant when the total unsettled direct costs and indirect costs to be allocated to any one contract, task order, or delivery order do not exceed \$2 million, regardless of the total contract, task order, or delivery order amount.

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